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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1945.

No. 750

PEOPLE OF THE STATE OF ILLINOIS, ex rel. ROBERT L. GORDON, Director of Labor,
Petitioner,

vs.

NIGEL D. CAMPBELL, Collector of Internal Revenue,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS.

GEORGE F. BARRETT,
Attorney General of the State of Illinois,
208 South LaSalle St., Chicago 4, Ill.
Attorney for Petitioner.

ALBERT E. HALLETT,
WILLIAM C. WINES,
Assistants Attorney General,
Of Counsel.

CHAMPION OREALY COMPANY, CHICAGO

INDEX.

	PAGE
Petition for Writ of Certiorari	1
A. Summary Statement of the Matters Involved	2
B. Jurisdiction	6
C. Questions Presented	8
D. Reasons for Granting the Writ	8
E. Conclusion	11
Brief in Support of Petition for Writ of Certiorari	12
Opinion Below	12
Jurisdiction	12
Statement	12
Specification of Errors	12
Argument	14
I. In view of the Intent of Congress as Manifested in the Social Security Act and Related Legislation, Section 3466 of the Revised Statutes is not Applicable to Give a Claim of the United States for Social Security Excise Taxes priority Over the Claim of a State for Unemployment Compensation Contributions when such Contributions are Exacted Under a State Statute Adopted in Accordance with the Congressional Policy Evinced by the Federal Act	14
II. The Debtor was not Insolvent within the Meaning of Section 3466 of the Revised Statutes	25
III. The State's Lien was so far Specific and Perfected as Effectively to Exclude the Funds in Question from the Estate of the Debtor, thereby Defeating the Federal Government's Right of Access to such Funds	29
IV. The Claim of the State of Illinois for Unemployment Compensation Contributions was a Secured Claim and, Consequently, was Entitled to Priority over the Unsecured Claim of the United States for Social Security Excise Taxes	31
Conclusion	33
Appendix (Pertinent Statutes)	34-48

CASES CITED.

Beaston v. Farmers Bank, 12 Pet. 102 26
Bixler v. Summerfield, 195 Ill. 147 32
Citizens Banking Co. v. Ravenna National Bank, 234 U. S. 360 27
Conrad v. Atlantic Insurance Company, 1 Pet. 386.... .....10, 25, 28, 29
Cook County National Bank v. United States, 107 U. S. 445 .....10, 14
Duparquet & Company v. Evans, 297 U. S. 216.....10, 28
Elfast v. Lamb, 111 F. (2d) 434 28
In Re Fisher, 219 F. 638 27
Helvering v. Davis, 301 U. S. 619 .....16, 24
Kennebec Box Company, Inc. v. O. S. Richards Corp., 299 F. 871 26
In Re McGraw, 254 F. 442 27
Mellon v. Michigan Trust Company, 271 U. S. 236....10, 14
New York v. Maclay, 288 U. S. 290 .....11, 29, 30
Nolte v. Hudson Navigation Company, 8 F. (2d) 859.. 26
People v. Chicago Gas Trust Company, 130 Ill. 268... 32
Rivard et al. v. Bijou Furniture Company, 67 R. I. 251, 21 Atl. (2d) 563, 68 R. I. 358, 27 Atl. (2d) 853..... .....2, 9, 19, 31, 32
In Re Ross and O'Brien Iron Works, Inc., 58 F. (2d) 961 27
Spokane County v. United States, 279 U. S. 80....10, 29, 31
Standard Accident Insurance Co. v. Sheftall & Co., 53 F. (2d) 40 28
Steward Machine Company v. Davis, 301 U. S. 548... .....9, 10, 15, 17, 18, 19, 24
Stitzer Hotel Company v. Beyer, 55 F. (2d) 620..... 27
Thelusson v. Smith, 2 Wheat. 396 .....10, 29, 31
United States v. Butler, 297 U. S. 1 16
United States v. Fisher, 2 Cranch. 358 26

United States v. Guaranty Trust Co. of New York, 280 U. S. 478 ..... 10, 14
United States v. Knott, 298 U. S. 544 29
United States v. Marxen, 307 U. S. 200 ..... 10, 14
United States v. Oklahoma, 261 U. S. 253 ..... 10, 25, 28
United States v. Texas, 314 U. S. 480 ..... 11, 29, 30, 31
United States v. Waddill, 323 U. S. 353 ..... 11, 29, 30, 31

STATUTES CITED.

Act of August 24, 1937, Chap. 75, 50 Stat. 754 22
Ill. Rev. Stat. 1943, Chap. 32, Section 157.5(d) 32
Ill. Rev. Stat. 1943, Chap. 48, Section 243 44-48
Ill. Rev. Stat. 1943, Chap. 77, Section 9 27
Revenue Act of 1939, Section 1601 21
Revenue Act of 1941, Section 701 21
Revenue Act of 1943, Section 602 21
Second Deficiency Appropriation Act, 1938, Chap. 681, 52 Stat. 1148 22
Second Revenue Act of 1940, Section 701 21
Social Security Act, Chap. 531, 49 Stat. 620 34-44
United States Code, Title 11, Chap. 1, 11 U. S. C. A. 1 28
United States Code, Title 11, Chap. 3, Section 21, 11 U. S. C. A. 21 26
United States Revised Statutes, Section 3466, 31 U. S. C. A. 191 34
War Mobilization and Reconversion Act, 50 U. S. C. A. App. 1667 23

MISCELLANEOUS.

Cong. Rec., Vol. 78, Pt. 10, P. 10770 17
Cong. Rec., Vol. 79, Pt. 1, P. 546 20
Douglas, Paul—Social Security in the United States (1936), pp. 146-148 20
Hearings before the Senate Committee on Finance on S. 1130, 74th Congress, 1st Session, P. 112 20

Hearings before the Special Committee on Post-war Economic Policy and Planning, House of Representatives, 78th Congress, 2nd Session, Pts. 2 and 3, Economic Problems of the Transition Period 23

Hearings before the Special Committee on Post-war Economic Policy and Planning, United States Senate, 78th Congress, 2nd Session, Pt. 3, Unemployment Compensation 23

House Report No. 615, 74th Congress, 1st Session 17, 19, 24

House Report No. 1855, 78th Congress, 2nd Session, P. 27 20

House Report No. 1855, 78th Congress, 2nd Session, pp. 27-28 20

Report of the President's Committee on Economic Security, p. 19 20

Senate Document No. 106, 78th Congress, 1st Session, p. 79 23

Senate Report No. 628, 74th Congress, 1st Session 17, 19, 24

Senate Report No. 539, Pt. 5, 78th Congress, 2nd Session, p. 6 23

The Social Security Board, Eighth American Scientific Congress, May 10-18, 1940 21

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Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS.

TO THE HONORABLE, THE CHIEF JUSTICE AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

This is a petition by the State of Illinois for this court's writ of *certiorari* to review a judgment and opinion of the Supreme Court of Illinois, rendered in this cause on September 17, 1945. The Supreme Court of Illinois consolidated this case with a companion case involving similar but not identical issues, in which companion case *certiorari* is being sought concurrently by separate petition under the title "*People of the State of Illinois, ex rel. Robert L. Gor-*

don, Director of Labor, Petitioner v. The United States of America."

A.

SUMMARY STATEMENT OF THE MATTERS INVOLVED.

As more fully appears from the formal Statement of Questions Presented, required by this court's rules and appearing *infra,* pages 7-8, this case and the above entitled companion case present important questions, decided in favor of the United States Government by the Supreme Court of Illinois. The first of these issues was decided adversely to the United States Government by the Supreme Court of Rhode Island in the case of *Rivard* v. *Bijou Furniture Company,* 67 R. I. 251, 21 Atl. (2d) 563; 68 R. I. 358, 27 Atl. (2d) 853, in an opinion which the Supreme Court of Illinois expressly recognized as in point but declined to follow. These questions may be stated as follows:

In view of the intent of Congress as manifested in the Social Security Act and related legislation, does section 3466 of the Revised Statutes of the United States (Appendix, *infra,*) apply to give a claim of the United States for Social Security excise taxes a priority over the claim of a state for Unemployment Compensation contributions when such unemployment compensation contributions are exacted under a state statute adopted in accordance with the Congressional policy evinced by the Federal Act?

Was the claim of the State of Illinois for Unemployment Compensation contributions a secured claim and consequently entitled to priority over the unsecured claim of the United States for Social Security Excise taxes?

Because of the nationwide scope of the Federal Social Security Act and the State Social Security laws enacted by the forty-eight states as integral parts of the Federal program thereby established, these questions are of great importance not only to the State of Illinois and all employees within this state but to all states and all employees and to the Federal Government. This is particularly true at the present time in view of the currently unsettled employment situation prevailing throughout the country which throws an unprecedented burden upon the resources of the several states.

In addition, the instant case presents two additional questions, which are not involved in the companion case, which are as follows:

Was the debtor insolvent within the meaning of section 3466 of the Revised Statutes of the United States?

Was the state's lien for unemployment compensation contributions so far specific and perfected as effectively to exclude the funds in question from the estate of the debtor and thereby to defeat the Federal Government's right of access to such funds?

These questions emerge from facts which are not in dispute and are briefly stated as follows:

On June 29, 1942, the Director of Labor of the State of Illinois filed a complaint in the Circuit Court of Cook County, Illinois, to foreclose his statutory lien for unemployment compensation contributions (R. 1). The allegations of the complaint, which are undisputed, may be summarized as follows:

Chicago Waste and Textile Company, a corporation, hereinafter called the debtor, was an employer, subject to the Illinois Unemployment Compensation Act (R. 2). It

became indebted to the Director of Labor in the sum of $734.89, plus interest and penalties, for contributions due under the Act (R. 2-3). It admitted its indebtedness to the Director, and its liability for the said contributions and the amount thereof were based upon reports it had filed with the Director of Labor (R. 3-4).

Section 26(a) of the Illinois Unemployment Compensation Act created a lien in favor of the Director for a sum equal to the amount of contributions, interest and penalties due from the said debtor. Such lien attached to the personal property or rights used by the debtor in connection with its business (R. 4-5). Notice of the said lien was filed by the Director prior to May 21, 1942, in the office of the Recorder of Deeds of Cook County, Illinois (R. 5, 9-12).[1]

Associated Agencies, Inc. obtained a judgment against the debtor in the Municipal Court of Chicago, and execution upon such judgment was issued on June 3, 1942 (R. 6-7). Said Associated Agencies, Inc. requested the bailiff of the Municipal Court to levy upon and sell at public auction the personal property of the debtor which was subject to the Director's lien (R. 7). The bailiff served notice that he would hold such sale on June 29, 1942 (R. 7). The complaint of the Director of Labor prayed for an injunction to restrain the bailiff from selling the personal property of the debtor and for the appointment of a receiver (R. 7-9). The writ of injunction was granted and a receiver was appointed (R. 13).

On October 9, 1942 and October 28, 1942, Carter H. Harrison, Collector of Internal Revenue for the First District of Illinois, hereinafter referred to as the United States, filed claims for Federal unemployment taxes (more com-

[1] The provisions of the Illinois Unemployment Compensation Act relating to the lien of the Director are set forth in the Appendix, *infra*, pp. 44-48.

monly known as taxes under Title IX of the Social Security Act) in the sum of $1,431.16, plus interest, and Federal insurance contributions (more commonly known as taxes under Title VIII of the Social Security Act) in the sum of $522.91, plus interest (R. 14-18). Subsequently, on November 16, 1942 (R. 43), the United States filed an intervening petition in which it alleged that the debtor was insolvent and that the United States was entitled to priority of payment under the provisions of Section 3466 of the United States Revised Statutes (R. 18-19). In his answer to the intervening petition, the Director denied the contention of the United States and claimed priority under his lien (R. 19-21). The Circuit Court of Cook County subsequently approved the final report of the receiver and ordered him to deposit the balance of $677.81, remaining in his hands, with the Clerk of the Circuit Court, subject to the further order of the Court (R. 21-22). The Circuit Court later ordered that the lien of the Director be given priority to the extent of 90 per cent of the funds on deposit with the Clerk of the Circuit Court, and that the United States have priority as to the 10 per cent remaining (R. 22).

In the Supreme Court of Illinois, because of the similarity of certain issues, the case at bar was consolidated for opinion with the case of *The People, For the Use of Francis B. Murphy, Director of Labor, Appellee,* v. *Advertising Review Publishing Company, et al.,—(United States of America, Appellant)*—No. 28490 (R. 25, 42). Since the facts in the two cases are dissimilar and the case at bar has additional issues, separate petitions are being submitted to this Court. In its original opinion filed May 23, 1945, the Supreme Court of Illinois held that it was unnecessary in the case at bar to decide the various questions raised by the United States and the Director of Labor with

respect to Section 3466 of the United States Revised Statutes; that on the basis of the credit provisions of Section 602(b) of the Revenue Act of 1943 (26 U. S. C. 602(b)), the Director was entitled to the entire funds on deposit with the Clerk of the Circuit Court of Cook County, Illinois (R. 26-28). The United States filed a petition for rehearing (R. 39-41). On September 17, 1945, the Supreme Court of Illinois modified its previous opinion and held that under Section 3466 the United States was entitled to priority on that portion of its claim which was for Federal insurance contributions, plus interest, and any balance remaining was to be paid to the Director and credited against the claim of the United States for Federal unemployment taxes (R. 42-55).

The Supreme Court of Illinois denied petitioner's contentions that Section 3466 was inapplicable to a claim for unemployment compensation contributions and that petitioner's lien was specific and perfected so as to bar the priority of the United States under Section 3466. However, it grounded this decision on its view that it was constrained by this Court's pronouncements on questions of Federal law. It impliedly denied petitioner's contention that the debtor was not insolvent within the meaning of Section 3466.

B.

JURISDICTION.

The final decision of the Supreme Court of Illinois was rendered on September 17, 1945. The time for filing this petition and brief in support thereof was extended by this Court to January 16, 1946 (R. 57).

The jurisdiction of this Court is invoked under Section 237(b) of the Judicial Code as amended by the Act of February 13, 1925.

The court below held that under Section 3466 of the United States Revised Statutes the claim of the United States for Federal insurance contributions was entitled to priority over the claim of the State for unemployment compensation contributions. The applicability of Section 3466 was raised in every stage of the proceedings below. In its intervening petition in the Circuit Court of Cook County, Illinois, the United States contended that under Section 3466 its claim was entitled to priority over the claim of the petitioner for unemployment compensation contributions (R. 18-19). This was denied in petitioner's answer to said intervening petition (R. 20). The Circuit Court of Cook County in effect decided against the contention of the United States (R. 22). Priority under Section 3466 was again raised by the United States in its brief before the Illinois Supreme Court, and was denied and answered by petitioner in his brief (R. 23). The Supreme Court of Illinois passed upon the questions arising under Section 3466, presented by both the United States and the petitioner, and specifically allowed priority under Section 3466 to the United States on that portion of its claim for Federal insurance contributions (R. 42-55).

The questions presented are of substance, as will more fully appear under the reasons for granting the writ (*Infra*, pp. 8-11).

C.

QUESTIONS PRESENTED.

1. In view of the intent of Congress as manifested in the Social Security Act and related legislation, does section 3466 of the Revised Statutes of the United States apply to give a claim of the United States for Social Security excise taxes a priority over the claim of a state for Unemploy-

ment Compensation contributions when such unemployment compensation contributions are exacted under a state statute adopted in accordance with the Congressional policy evinced by the Federal Act?

2. Was the debtor insolvent within the meaning of section 3466 of the Revised Statutes of the United States?

3. Was the state's lien for unemployment compensation contributions so far specific and perfected as effectively to exclude the funds in question from the estate of the debtor and thereby to defeat the Federal Government's right of access to such funds?

4. Was the claim of the State of Illinois for Unemployment Compensation contributions a secured claim and consequently entitled to priority over the unsecured claim of the United States for Social Security excise taxes?

D.

REASONS FOR GRANTING THE WRIT.

1. The court below has decided Federal questions of substance not heretofore precisely determined by this court and has expressly recognized that its decision is in direct conflict with the decision of a court of last resort of a sister state.

An issue of the utmost importance to the Federal government and to all of the States is involved in this petition for review. Every State in the Union now has an unemployment compensation system which was established as a result of the enactment of Titles III and IX of the Social Security Act. As will be demonstrated in the accompanying brief, said Titles III and IX and every State unemployment compensation system are part and parcel of a National plan to promote the general welfare of the United

States and to serve the fiscal needs of the Federal Treasury. The contributions which the States collect under their unemployment compensation laws, and which are retained until needed in a separate trust fund in the Treasury of the United States, are used solely for the purpose of paying benefits to unemployed workers, thereby sustaining the National burden of unemployment and relieving the Federal Treasury of the terrific drains made upon it by unemployment relief. *Steward Machine Company* v. *Davis*, 301 U. S. 548, 574-576, 586-591.

It is, therefore, of paramount importance to determine whether the priority of the United States under Section 3466 may be invoked over the claim of a State for unemployment compensation contributions when such contributions are used solely to effectuate a clear Federal purpose, which Congress has unmistakably indicated is best served by the payment of contributions into State unemployment compensation funds. *Steward Machine Company* v. *Davis*, *supra*, p. 589. The issue has arisen in other States and will, undoubtedly, continue to be a subject of controversy until resolved by this Court. A conflict already exists between the decisions of the highest courts of Illinois and Rhode Island.

In *Rivard* v. *Bijou Furniture Company*, 67 R. I. 251, 21 Atl. (2d) 563, 68 R. I. 358, 27 Atl. (2d) 853, which involved the claim of the State of Rhode Island for unemployment compensation contributions and the claim of the United States for Federal insurance contributions and capital stock taxes, the Supreme Court of Rhode Island held that the claim of the State for unemployment compensation contributions was excluded from the purview of Section 3466. Since all State unemployment compensation laws have common objectives, there is no warrant for holding Section 3466 applicable in one State and inapplicable in another

State. Uniformity of decision is essential. A final adjudication by this Court would be equally in the interests of the Federal government. By applying for a stay of mandate on the ground that it intended to seek certiorari (R. 55-56), the United States has indicated that it is just as anxious as petitioner to elicit this Court's decision on a question of great import. It is, therefore, respectfully submitted that this case raises an issue of a very substantial nature which can be determined authoritatively only by this Court.

2. The court below has decided Federal questions of substance not in accord with applicable principles enunciated by this Court.

(a) The holding of the court below that Section 3466 is applicable to defeat the claim of a State for unemployment compensation contributions is in conflict with the principles expressed by this Court in *Steward Machine Company* v. *Davis*, 301 U. S. 548; *United States* v. *Marxen*, 307 U. S. 200; *United States* v. *Guaranty Trust Company of New York*, 280 U. S. 478; *Mellon* v. *Michigan Trust Company*, 271 U. S. 236; *Cook County National Bank* v. *United States*, 107 U. S. 445.

(b) The implied holding of the court below that the debtor was insolvent within the meaning of Section 3466 is in conflict with the decisions of this Court in *U. S.* v. *Oklahoma*, 261 U. S. 253; *Conrad* v. *Atlantic Insurance Company*, 1 Pet. 386; *Duparquet Company* v. *Evans*, 297 U. S. 216.

(c) The holding of the court below that petitioner's lien was not specific and perfected so as to bar the priority of the United States under Section 3466 is at variance with the expressions of this Court in *Thelusson* v. *Smith*, 2 Wheat. 396; *Spokane County* v. *United States*, 279 U. S.

80; *New York* v. *Maclay*, 288 U. S. 290; *United States* v. *Texas*, 314 U. S. 480; *United States v. Waddill*, 323 U. S. 353.

Each of the foregoing reasons for granting the writ is fully developed in the accompanying brief.

E.

CONCLUSION.

For the reasons stated, petitioner prays that the petition for a writ of *certiorari* be granted.

GEORGE F. BARRETT,
Attorney General of the State of Illinois,
Attorney for Petitioner.

ALBERT E. HALLETT,
WILLIAM C. WINES,
Assistants Attorney General,
Of Counsel.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

THE OPINION OF THE COURT BELOW.

The order of the Circuit Court of Cook County, Illinois, was entered without an opinion (R. 22). The opinion of the Supreme Court of Illinois (R. 42-55) is reported in 391 Ill. 29, 62 N. E. (2d) 537.

JURISDICTION.

The statement concerning jurisdiction is set forth in the Petition (*supra* pp. 6-7) and is incorporated herein by reference.

STATEMENT.

The statement of the case appears in the Petition (*supra* pp. 2-6) and is incorporated herein by reference. There is no dispute concerning the facts involved. Such facts as are relevant are set forth in such statement and the argument that follows.

SPECIFICATION OF ERRORS TO BE URGED.

The Supreme Court of Illinois erred:

1. In holding that the claim of the United States for Federal insurance contributions was entitled to priority under Section 3466 of the United States Revised Statutes over the claim of the petitioner for unemployment compensation contributions.

2. In holding that Section 3466 was applicable to defeat petitioner's claim for unemployment compensation contributions.

3. In holding that the debtor was insolvent within the meaning of Section 3466.

4. In holding that petitioner's lien was not specific and perfected so as to bar the priority of the United States under Section 3466.

5. In failing to hold that petitioner's secured claim was entitled to priority over the unsecured claim of the United States.

ARGUMENT.

I.

IN VIEW OF THE INTENT OF CONGRESS AS MANIFESTED IN THE SOCIAL SECURITY ACT AND RELATED LEGISLATION, SECTION 3466 OF THE REVISED STATUTES IS NOT APPLICABLE TO GIVE A CLAIM OF THE UNITED STATES FOR SOCIAL SECURITY EXCISE TAXES A PRIORITY OVER THE CLAIM OF A STATE FOR UNEMPLOYMENT COMPENSATION CONTRIBUTIONS, WHEN SUCH CONTRIBUTIONS ARE EXACTED UNDER A STATE STATUTE ADOPTED IN ACCORDANCE WITH THE CONGRESSIONAL POLICY EVINCED BY THE FEDERAL ACT.

This Court has repeatedly held that it will not apply Section 3466 where the concept of Federal priority is inconsistent with the intention of Congress, as manifested in other statutes. *United States* v. *Marxen*, 307 U. S. 200; *United States* v. *Guaranty Trust Company of New York*, 280 U. S. 478; *Mellon* v. *Michigan Trust Company*, 271 U. S. 236; *Cook County National Bank* v. *United States*, 107 U. S. 445. In each of the foregoing cases this Court held that, because of the nature of the legislation involved therein, Congress intended that the United States should not have priority under Section 3466.

The petitioner's claim for unemployment compensation contributions is predicated on a law which, like all other State unemployment compensation statutes, was enacted in furtherance of a paramount Federal policy. The character and origin of petitioner's claim stem from Title IX of the

Social Security Act. The purpose of Title IX, as we shall show was to create a National program of unemployment insurance by inducing every State in the Union to establish a system of unemployment insurance which would meet the minimum standards imposed by Congress. Through the agency of each State, Congress sought the imposition and collection of contributions to be used in the payment of benefits to unemployed workers. Such action by the States was deemed essential in order to promote the general welfare of the Nation and to serve the fiscal needs of the Federal Treasury by relieving it of the terrific drains made upon it by unemployment relief. *Steward Machine Company* v. *Davis,* 301 U. S. 548, 586-589, 591.

Although petitioner's claim for unemployment compensation contributions has been referred to as a claim of the State, it is in reality a claim of the Nation. In its relation to the welfare of the Country and the needs of the Federal Treasury, it is, unquestionably, tantamount to a claim of the United States. That Congress deemed the raising of revenue through the States for the relief of the unemployed to be of such tremendous National importance as to bar the application of Section 3466 is incisively demonstrated by (1) the exigencies which gave rise to a National program of unemployment insurance; (2) the provisions of Titles III, VII and IX of the Social Security Act; (3) the amendments to Title IX; (4) related legislation of Congress.

1. The critical conditions which gave rise to a national program of unemployment insurance.

These exigencies have been pertinently and graphically described by this Court. In *Steward Machine Company* v. *Davis, supra,* pp. 586-588, which involved the constitutionality of Title IX, this Court declared:

". . . there is need to remind ourselves of facts as to the problem of unemployment . . . During the years 1929 to 1936, when the country was passing through a cyclical depression, the number of the unemployed mounted to unprecedented heights. Often the average was more than ten million; at times a peak was attained of sixteen million or more. Disaster to the breadwinner meant disaster to dependents . . . The fact developed quickly that the states were unable to give the requisite relief. The problem had become national in area and dimensions. There was need of help from the nation if the people were not to starve. It is too late today for the argument to be heard with tolerance that in a crisis so extreme the use of the moneys of the nation to relieve the unemployed and their dependents is a use for any purpose narrower than the promotion of the general welfare. Cf. *United States* v. *Butler*, 297 U. S. 1, 65, 66, *Helvering* v. *Davis*, decided herewith. The nation responded to the call of the distressed. Between January 1, 1933 and July 1, 1936, the states . . . incurred obligations of $689,291,802 for emergency relief; local subdivisions an additional $775,675,366. In the same period the obligations for emergency relief incurred by the national government were $2,920,307,125, or twice the obligations of states and local agencies combined.

According to the President's budget message for the fiscal year 1938, the national government expended for public works and unemployment relief for the three fiscal years 1934, 1935 and 1936, the stupendous total of $8,681,000,000. The *parens patriae* has many reasons—fiscal and economic as well as social and moral—for planning to mitigate disasters that bring these burdens in their train. . . . insofar as there was failure by the states to contribute relief according to the measure of their capacity, a disproportionate burden, and a mountainous one, was laid upon the resources of the Government of the nation."

In *Helvering* v. *Davis*, 301 U. S. 619, 641, which involved an attack upon the constitutionality of Titles II and VIII of the Social Security Act (Old Age Benefits), this Court stated:

". . . The purge of nation-wide calamity that began in 1929 has taught us many lessons. Not the least is the solidarity of interests that may once have seemed to be divided. Unemployment spreads from state to state, the hinterland now settled that in pioneer days gave an avenue of escape. . . . Spreading from state to state, unemployment is an ill not particular but general, which may be checked, if Congress so determines, by the resources of the nation. If this can have been doubtful until now, our ruling today in the case of the *Steward Machine Co. supra,* has set the doubt at rest. . . ."

The national scope of the problem of unemployment was stressed by the President of the United States in his message to Congress on June 8, 1934[2] wherein he declared: "We are compelled to employ the active interests of the Nation as a whole through government in order to encourage a greater security for each individual who composes it. . . . If, as our Constitution tells us, the Federal government was established, among other things, to promote the general welfare it is our plain duty to provide for that security upon which welfare depends . . ."

Both branches of Congress emphasized that unemployment relief posed the most serious question for the Nation.[3]

2. Title IX of the Social Security Act.

To cope with the problem, Congress enacted Titles III, VII and IX of the Social Security Act (*Infra* pp. 34-44) Briefly, Title IX provides that every employer (with stated exceptions) of eight or more workers is to pay an annual excise tax, measured by wages. The taxpayer, however, is allowed a credit against the Federal tax for the amount of

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[2] Cong. Rec. Vol. 78, Pt. 10, p. 10770.

[3] Senate Report No. 628, 74th Congress, 1st Session, p. 10; House Report No. 615, 74th Congress, 1st Session, p. 7.

contributions paid into an unemployment compensation fund established under a State law, said credit not to exceed 90 per cent of the Federal tax.[4] Such credit is allowable only if the State law is periodically certified by the Social Security Board to the Secretary of the Treasury as satisfying certain minimum criteria (*Infra* pp. 39-41). Among these criteria, which will shortly be considered, is the requirement that the State law provide that the contributions paid into the State fund be promptly paid over to the Secretary of the Treasury to the credit of the "Unemployment Trust Fund." The Secretary of the Treasury is directed to invest the funds (except such portion as is, in his opinion, required to meet current withdrawals) in government securities. He is directed to pay out of the fund, to any competent agency, such sums as it shall duly requisition from the amount standing to its credit. The money withdrawn from the Unemployment Trust Fund by the State agency must be used solely for the payment of unemployment compensation benefits.

The plain purpose of the credit is to build up an adequate fund through the payment of contributions into State unemployment compensation systems, thereby sustaining the National burden of unemployment and safeguarding the Federal Treasury. To the extent that taxpayers make contributions to a State unemployment compensation fund, the drain upon the Federal Treasury is diminished. *Steward Machine Company* v. *Davis, supra,* pp. 589-591. The Federal tax and the credit are "approximate equivalents." *Steward Machine Company* v. *Davis, supra,* p. 591. The needs of the Federal Treasury can be cared for as well by payments of unemployment compensation contributions to the States as by payment of taxes to the United States.

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[4] The remaining 10 per cent is used in covering the costs of administering the State unemployment compensation systems. See *infra,* p. 20.

Rivard, et al. v. *Bijou Furniture Company*, 68 R. I. 358, 361, 27 Atl. (2d) 853, 855. That these principles were uppermost in the mind of Congress in extending the credit is apparent from an examination of the reports of both the Senate Finance Committee and the House Committee on Ways and Means.[5]

Moreover, Congress believed that the general welfare of the country would be better served by the payment of contributions into State unemployment compensation funds than by the payment of the tax to the Federal government. *Steward Machine Company* v. *Davis, supra*, p. 589.

As indicated, Title IX sets out certain criteria which the State law must satisfy before the taxpayer, who pays contributions under such a law, may avail himself of the credit. These criteria are manifestly designed to promote the fiscal policy of the Federal government by insuring that the State law under which the taxpayer makes his contributions is a genuine and workable unemployment insurance measure. If the State statute were merely masquerading as an unemployment compensation law and had been enacted to take advantage of the credit for some foreign purpose, the Federal fiscal policies which the credit is calculated to serve would be frustrated. *Steward Machine Company* v. *Davis, supra*, p. 593.

3. Titles III and VII of the Social Security Act.

To further encourage the State to establish unemployment compensation systems, Congress, in Title III of the Social Security Act, provided for grants to cover the administrative costs of such systems (Appendix, *infra*, pp. 34-35). The funds for such grants are derived from the

[5] Senate Report No. 628, 74th Congress, 1st Session, p. 15; House Report No. 615, 74th Congress, 1st Session, p. 16.

10% of the Federal tax which the Government retains for the purpose of meeting the costs of administering the State unemployment compensation systems.[6] However, as in Title IX, the State unemployment compensation laws are required to meet certain minimum criteria, intended to advance the fiscal policy of the United States (Appendix, *infra*, pp. 35-37).

That Congress assumed responsibility for the successful operation of the State unemployment compensation systems is evidenced not only by the standards which it prescribed in Titles III and IX and by its supervision of the "Unemployment Trust Fund" but also by the control which it has exercised through the activities of the Social Security Board which it created under Title VII of the Social Security Act (Appendix, *infra*, pp. 37-38). Through the Social Security Board, Congress has continuously reviewed State unemployment compensation legislation and administration to assure conformity with Federal standards, has determined and granted the amount of funds necessary for proper administration of State unemployment compensation systems, has guided the States in improving their legislation and administration, and has engaged in research designed to analyze the character of the problem of unemployment and to serve as a basis for

[6] Message of the President to Congress, January 17, 1935, Cong. Rec., Vol. 79, Pt. 1, p. 546; Hearings before the Senate Committee on Finance on S. 1130, 74th Cong., 1st Session, p. 112; Report of the President's Committee on Economic Security, p. 19; House Report No. 1855, 78th Congress, 2nd Session, p. 27; P. Douglas, Social Security in the United States (1936), pp. 146-148. ". . . administrative costs, if we judge from German and English experience, are likely to equal one-ninth of the benefits or one-tenth of the total costs. See my Standards of Unemployment Insurance, pp. 122-123. It was not by accident, therefore, but rather from the very structure of unemployment insurance itself that the federal government was authorized in Title IX to retain one-tenth of the tax on payrolls instead of for example one-twentieth or, as in the federal inheritance tax, two-tenths." Social Security in the United States, *supra*, footnote, p. 147.

the revision of legislation and administrative techniques dealing with that problem.[7]

4. Amendments to Title IX of the Social Security Act.

It must be emphasized that Title IX of the Social Security Act does not establish a system of unemployment compensation. No provision is made therein for the payment of benefits to unemployed persons. By the credit provisions of Title IX and the grants for administrative purposes in Title III, the States were induced to set up unemployment compensation systems to promote the general welfare of the Nation and to serve the fiscal needs of the Federal Treasury.

The heart of the unemployment compensation program is in the benefits which are paid by the States to unemployed workers and in the contributions which are collected by the States for the payment of such benefits. Time and time again, Congress has demonstrated that it is the payment of contributions to the States which advances the fiscal purposes of the Federal government. Although the credit against the Federal tax was originally allowed only if contributions to State funds were paid within a specified period of time, Congress has repeatedly amended Title IX so as to extend the credit to taxpayers who are delinquent in the payment of contributions, in order to induce them to pay their contributions to the States.[8]

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[7] The Social Security Board, Eighth American Scientific Congress, May 10-18, 1940.

[8] Section 1601, Internal Revenue Act of 1939; Section 701, Second Revenue Act of 1940; Section 701, Revenue Act of 1941; Section 602, Revenue Act of 1943.

5. Related Legislation.

The Social Security Act became law on August 14, 1935. The payment of Federal taxes under Title IX commenced in 1936. A number of the States did not enact their unemployment compensation laws until some time later. In the meantime, the employers in such States, who were subject to the Federal tax, paid the full amount of the tax to the National government. The intention of Congress to achieve the purposes of Title IX through the payment of contributions into State unemployment compensation systems rather than through the payment of taxes to the Federal government is strikingly revealed in its action, in which it turned over 90 per cent of the taxes collected from the foregoing employers to the State unemployment compensation systems which had been established subsequent to the initial payment of Federal taxes under Title IX.[9]

There is still further proof, if need be, of the deep concern which Congress has manifested in the maintenance and growth of State unemployment compensation funds. Congress has fully recognized that such funds would play a major role during the period of post-war readjustment and would serve as the first line of defense for the millions of workers employed in war industries who would be laid off and unemployed during industry's reconversion and readjustment to peace-time production. The Senate and the House appointed Special Committees on Post-war Economic Policy and Planning, which held extensive hearings on the problem of unemployment compensation in the

[9] Public Act 353, Ch. 755, 50 Stat. 754; Second Deficiency Appropriation Act 1938, Ch. 681, 52 Stat. 1148.

post-war period.[10] Interviews with representatives of important government and private agencies on post-war problems and plans disclosed that "The fear of unemployment after the war colors the thinking of all the agencies interviewed. Those concerned with the labor problems give it first rank in their planning."[11] As a result of the recommendations of the said Special Committees on Post-war Economic Policy and Planning,[12] Congress enacted legislation guaranteeing the solvency of State unemployment compensation funds.[13]

In view of the tremendous importance which Congress attached to the accumulation of unemployment compensation contributions by the States, it is inconceivable that Congress expected or desired the collection of such contributions to be impaired or jeopardized by the invocation of Section 3466. On the contrary, the legislative purposes underlying Titles III, VII and IX of the Social Security Act reflect an intention on the part of Congress to subordinate the operation of Section 3466 to the paramount interest of insuring the success of the National program of unemployment relief.

In holding that the claim of the petitioner was subordinate to the claim of the United States for taxes under Title VIII, the Supreme Court of Illinois looked to form, not substance, and disregarded the character and significance of petitioner's claim. In the light of what has already

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[10] Hearings before the Special Committee on Post-war Economic Policy and Planning, United States Senate, 78th Congress, Second Session, part 3, Unemployment Compensation; Hearings before the Special Committee on Post-war Economic Policy and Planning, House of Representatives, 78th Congress, Second Session, Parts 2 and 3, Economic Problems of the Transition Period.

[11] Senate Document No. 106, 78th Congress, 1st Session, p. 79.

[12] Senate Report No. 539, part 5, 78th Congress, 2nd Session, p. 6; House Report No. 1855, 78th Congress, 2nd Session, pp. 27-28.

[13] War Mobilization and Reconversion Act (50 U. S. C. A. App. 1667); Senate Report No. 565, 79th Congress, 1st Session, p. 2.

been said, it is unnecessary to labor the point that petitioner's claim serves a Federal purpose, that it is tantamount to a claim of the United States, and that it stems from Title IX of the Social Security Act.

Both Titles VIII and IX are parts of the same Act and are designed to effectuate a common purpose—the general welfare of the United States. ". . . the ill is all one, or at least not greatly different, whether men are thrown out of work because there is no longer work to do or because the disabilities of age make them incapable of doing it. Rescue becomes necessary irrespective of the cause. The hope behind this statute is to save men and women from the rigors of the poorhouse as well as from the haunting fear that such a lot awaits them when journey's end is near." *Helvering* v. *Davis, supra,* p. 641. Congress deemed unemployment "an even more prevalent cause of dependency than old age; in fact . . . the most serious of all hazards confronting industrial workers. . . ."[14] Obviously, Congress did not intend that a claim for unemployment compensation contributions should be subordinated to a claim for taxes for old-age security.

It is important to note that in its oral argument before this Court in *Steward Machine Company* v. *Davis, supra,* p. 559, the United States contended that in imposing and collecting contributions under their unemployment compensation laws, the States were raising revenue for the general welfare of the United States; that the framers of the Constitution contemplated three different methods of raising revenue for the general welfare of the Nation. "The first was direct Federal taxation collected by Federal officers. The second was that the Federal government

[14] House Report No. 615, 74th Congress, 1st Session, page 7; Senate Report No. 628, 74th Congress, 1st Session, page 10.

lay the tax but the collection be by the State officers. The third method is that the States raise the revenue for the general welfare of the United States."

To invoke Section 3466 on the grounds that the revenue for old-age security is raised by the Federal government, whereas the revenue for unemployment relief is raised by the States, is totally devoid of merit and utterly foreign to the spirit and purpose of the Social Security Act. The clear-cut purpose and intention of Congress to treat unemployment relief as a Federal obligation and to assume the responsibility for the success of the unemployment compensation systems initiated under Title IX of the Social Security Act is not to be defeated by the sophistry of treating a claim for unemployment compensation contributions as a State claim as distinguished from a Federal claim.

II.

THE DEBTOR WAS NOT INSOLVENT WITHIN THE MEANING OF SECTION 3466 OF THE REVISED STATUTES.

Mere insolvency will not invoke the application of Section 3466. The insolvency contemplated therein must be manifested in one of the modes pointed out by the statute. *U. S.* v. *Oklahoma*, 261 U. S. 253, 259-262; *Conrad* v. *Atlantic Insurance Company*, 1 Pet. 386, 439.

Except when the estate of a deceased debtor is involved, Section 3466 applies only to three enumerated situations—(1) when the insolvent debtor makes a voluntary assignment of its property; (2) when the property of an absconding, concealed or absent debtor is attached by law; or (3) when an act of bankruptcy is committed. *U. S.* v. *Oklahoma, supra; Conrad* v. *Atlantic Insurance Company,*

supra; U. S. v. *Fisher,* 2 Cranch. 358, 390; *Beaston* v. *Farmers Bank,* 12 Pet. 102, 133-134, 138; *Kennebec Box Company, Inc.* v. *O. S. Richards Corp.,* 299 F. 871, 873; *Nolte* v. *Hudson Navigation Company,* 8 F. (2d) 859, 865-866.

The case at bar is not concerned with a voluntary assignment of property or with an absconding, concealed or absent debtor. Consequently, Section 3466 is inapplicable unless it is shown that the debtor committed an act of bankruptcy. Section 21, Chapter 3, Title 11, of the U. S. Code (11 U. S. C. A. 21) defines an act of bankruptcy as follows:

> "Acts of bankruptcy by a person shall consist of his having (1) conveyed, transferred, concealed, removed, or permitted to be concealed or removed any part of his property, with intent to hinder, delay, or defraud his creditors or any of them; or (2) transferred, while insolvent, any portion of his property to one or more of his creditors with intent to prefer such creditors over his other creditors; or (3) suffered or permitted, while insolvent, any creditor to obtain a lien upon any of his property through legal proceedings and not having vacated or discharged such lien within thirty days from the date thereof or at least five days before the date set for any sale or other disposition of such property; or (4) made a general assignment for the benefit of his creditors; or (5) while insolvent or unable to pay his debts as they matured, procured, permitted, or suffered voluntarily or involuntarily the appointment of a receiver or trustee to take charge of his property; or (6) admitted in writing his inability to pay his debts and his willingness to be adjudged a bankrupt."

The United States does not contend nor is there anything in the record to indicate that the debtor committed an act of bankruptcy as defined under clauses (1), (2), (4) or (6) of the above provision.

Clauses (3) and (5) must, therefore, be considered. Clause (3) applies to a person who suffers or permits, "while insolvent, any creditor to obtain a lien upon any of his property through legal proceedings. . . ." The lien of a judgment against personal property arises at the time the execution is placed in the hands of the bailiff for levy. (Ch. 77, Sec. 9, Ill. Rev. Stat., 1943.) Such execution was placed with the bailiff for levy sometime prior to the filing of petitioner's foreclosure suit (R. 7). In order to show that the debtor committed an act of bankruptcy under clause (3), the United States was required to establish that the debtor was insolvent at the time the execution was placed with the bailiff for levy. *Citizens Banking Company* v. *Ravenna National Bank*, 234 U. S. 360, 364; *Stitzer Hotel Company* v. *Beyer*, 55 F. (2d) 620, 621; *In Re Ross and O'Brien Iron Works, Inc.*, 58 F. (2d) 961, 962; *In Re Fisher*, 219 F. 638, 639; *In Re McGraw*, 254 F. 442, 446.

Neither the petitioner's foreclosure suit brought on June 29, 1942 (R. 1-9), nor the intervening petition of the United States, filed subsequent to October 28, 1942 (R. 18-19, 43), contain any showing or allegation that the debtor was insolvent when the execution was placed in the hands of the bailiff for levy. The record is devoid of any such evidence. The United States makes no such contention. Plainly, no act of bankruptcy was committed as defined by clause (3).

Clause (5) remains to be considered. Petitioner's foreclosure suit was brought to enforce his statutory lien on the personal property of the debtor, used by it in connection with its business (R. 6). The receivership was incidental to the enforcement of the lien. A receivership in foreclosure does not constitute an act of bankruptcy. The type of receivership contemplated in clause (5) is one that involves a liquidation of all of the property of the bankrupt within the jurisdiction, and in substance amounts to

a general assignment of the bankrupt's assets. *Conrad* v. *Atlantic Insurance Company, supra,* p. 439; *Elfast* v. *Lamb,* 111 F. (2d) 434, 436. It does not contemplate a receivership to aid a lienholder in realizing on his lien. *Duparquet Company* v. *Evans,* 297 U. S. 216, 224; *Standard Accident Insurance Company* v. *Sheftall & Company,* 53 F. (2d) 40, 41. No act of bankruptcy was, therefore, committed, as defined in clause (5).

It should also be noted that under clause (5) no act of bankruptcy is committed unless the debtor is insolvent at the time of the appointment of the receiver. The United States has not shown or alleged that the debtor was insolvent when the receiver was appointed. Its intervening petition, filed approximately four months after the appointment of the receiver, states that "the defendant herein *is* insolvent and is unable to pay and discharge in full all of its indebtedness." (R. 18.) Petitioner's answer to the said intervening petition merely admitted that the debtor was insolvent as of the date of the said answer (R. 20).

Although petitioner, in his foreclosure suit, alleged that he believed the debtor to be insolvent (R. 7) such an allegation is totally insufficient to constitute insolvency under clause (5).[15] See also *United States* v. *Oklahoma, supra,* 259-263. Moreover, the allegation was clearly inadequate to sustain the burden which the United States had of establishing not the belief but the fact of insolvency at the time of the appointment of the receiver.

It is respectfully submitted that Section 3466 is inapplicable, since no act of bankruptcy was shown to have been committed.

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[15] "A person shall be deemed insolvent within the provisions of this title whenever the aggregate of his property, exclusive of any property which he may have conveyed, transferred, concealed, removed, or permitted to be concealed or removed, with intent to defraud, hinder, or delay his creditors, shall not at a fair valuation be sufficient in amount to pay his debts." (11 U. S. C. A. 1.)

III.

THE STATE'S LIEN WAS SO FAR SPECIFIC AND PERFECTED AS EFFECTIVELY TO EXCLUDE THE FUNDS IN QUESTION FROM THE ESTATE OF THE DEBTOR, THEREBY DEFEATING THE FEDERAL GOVERNMENT'S RIGHT OF ACCESS TO SUCH FUNDS.

Even if it is assumed that Section 3466 is applicable to a claim for unemployment compensation contributions and that the debtor was insolvent within the intendment of the statute, nevertheless the United States is not entitled to priority as the lien of the petitioner was specific and perfected when the receiver was appointed.

Although not expressly deciding the question, this Court has repeatedly implied that pre-existing liens which are specific and perfected will defeat the priority of the United States under Section 3466. *Thelusson* v. *Smith*, 2 Wheat. 396, 425-426; *Conrad* v. *Atlantic Insurance Company*, 1 Pet. 386, 441, 444; *Spokane County* v. *United States*, 279 U. S. 80, 95; *New York* v. *Maclay*, 288 U. S. 290, 293, 294; *United States* v. *Knott*, 298 U. S. 544, 549-551; *United States* v. *Texas*, 314 U. S. 480, 485, 486; *United States* v. *Waddill*, 323 U. S. 353, 360.

In *United States* v. *Knott*, *supra*, 551, this Court in effect declared that a specific and perfected lien would bar the priority of the United States.

In its final opinion of September 17, 1945, the court below held that petitioner's lien was not specific and perfected. The Court's conclusion was predicated entirely on dissimilar facts in the case of *The People, For the Use of Francis B. Murphy, Director of Labor, Appellee*, v. *Adver-*

tising Review Publishing Company, et al.,—(United States of America, Appellant), No. 28490, which was consolidated for opinion with the case at bar. A plain reading of the opinion discloses that the Court completely overlooked the facts in the case at bar.

1. Petitioner's lien was specific at the time of the appointment of the receiver.

The debtor filed contribution reports showing the precise amount of contributions due and owing and admitted its indebtedness (R. 3-4). Notice of the lien, disclosing the amount of contributions due from the debtor, was recorded (R. 5, 9-12). All this was done prior to the appointment of the receiver. The amount of contributions secured by the lien, therefore, was certain and liquidated at the time the receiver was appointed. The property, subject to the lien, was also ascertainable at that time. It was already in the custody of the bailiff and became fixed and constant when the injunction against the bailiff was granted (R. 7, 13). This Court has applied various tests in determining the specificity of liens. It has held that the liability should be known and determined and that the property subject to the lien should be ascertainable. *New York* v. *Maclay, supra,* 293; *United States* v. *Texas, supra,* 487, 488; *United States* v. *Waddill, supra,* 357, 358. Judged by these tests, the petitioner's lien was unquestionably specific.

2. Petitioner's lien was perfected at the time of the appointment of the receiver.

All substantial aids to the enforcement of the lien had been utilized. Foreclosure proceedings had been instituted to enforce the lien in accordance with the provisions of the Illinois Unemployment Compensation Act (Appendix, *infra,* p. 47). The debtor was divested of possession of

its personal property by the bailiff (R. 7). The petitioner obtained a writ enjoining the bailiff from selling such property (R. 13). By actually asserting his lien and enjoining the bailiff, the petitioner was enabled to satisfy his claim out of the seized goods. Petitioner's lien at the time of the appointment of the receiver was not "a caveat of a more perfect lien to come" but it was a perfected lien as measured by the standards prescribed by this Court. *Thelusson* v. *Smith, supra,* 425, 426; *Spokane County* v. *U. S., supra,* 94; *United States* v. *Texas, supra,* 487, 488; *United States* v. *Waddill, supra,* 358, 359.

It is respectfully submitted that the petitioner's lien possesses all the characteristics which this Court deems essential to a specific and perfected lien.

IV.

THE CLAIM OF THE STATE OF ILLINOIS FOR UNEMPLOYMENT COMPENSATION CONTRIBUTIONS WAS A SECURED CLAIM AND CONSEQUENTLY WAS ENTITLED TO PRIORITY OVER THE UNSECURED CLAIM OF THE UNITED STATES FOR SOCIAL SECURITY EXCISE TAXES.

The claim of the United States to priority is based solely on Section 3466. The foregoing arguments under Point I conclusively demonstrate that no such priority exists, and that Section 3466 may not be invoked to defeat a claim for unemployment compensation contributions. In *Rivard* v. *Bijou Furniture Company, supra,* the Supreme Court of Rhode Island held that, since Section 3466 was inapplicable, the claim of the State for unemployment compensation contributions and the claims of the United States for capital

stock tax and Federal insurance contributions were entitled to parity. However, the Supreme Court of Rhode Island specifically noted in its opinion that no liens were involved. (67 R. I. 253, 21 Atl. (2d) 565).

In that respect the case at bar is distinguishable from the *Rivard case, supra.* In the case at bar the United States did not contend, nor is there any evidence in the record to indicate, that its claim was secured by a lien. On the other hand, the record shows that the claim of the petitioner was secured by a lien which had attached to the personal property or rights used by the debtor in connection with its business (R. 4-5). The debtor was a corporation and could only own such personal property as was appropriate for the transaction of its business. Ch. 32, Sec. 157.5(d), Ill. Rev. Stat., 1943; *Bixler* v. *Summerfield,* 195 Ill. 147, 153; *People* v. *Chicago Gas Trust Company,* 130 Ill. 268, 287. In the absence of any evidence to the contrary, it is, of course, to be presumed that the personal property of the debtor, upon which the petitioner sought to foreclose his lien, was used by such debtor in connection with its business.

It is, therefore, respectfully submitted that the petitioner's secured claim is entitled to preference over the unsecured claim of the United States.

Even if it is assumed that Section 3466 may be invoked against a claim for unemployment compensation contributions, nevertheless the United States is not entitled to priority. The foregoing arguments under Point II and III decisively show that the debtor was not insolvent within the meaning of Section 3466 or that if it was so insolvent the lien of the petitioner was specific and perfected so as to bar the priority of the United States. In either event the

secured claim of the petitioner is entitled to preference over the unsecured claim of the United States.

Conclusion.

For the reasons stated, petitioner prays that the petition for a writ of *certiorari* be granted.

GEORGE F. BARRETT,
Attorney General of the State of Illinois,
Attorney for Petitioner.

ALBERT E. HALLETT,
WILLIAM C. WINES,
Assistants Attorney General,
Of Counsel.

APPENDIX.

Section 3466 of the Revised Statutes of the United States.
(31 U. S. C. A. 191).

Whenever any person indebted to the United States is insolvent, or whenever the estate of any deceased debtor, in the hands of the executors or administrators, is insufficient to pay all the debts due from the deceased, the debts due to the United States shall be first satisfied; and the priority established shall extend as well to cases in which a debtor, not having sufficient property to pay all his debts, makes a voluntary assignment thereof, or in which the estate and effects of an absconding, concealed, or absent debtor are attached by process of law, as to cases in which an act of bankruptcy is committed.

THE SOCIAL SECURITY ACT.
Ch. 531, 49 Stat. 620.

* * * * * * *

Title III—Grants to States for Unemployment Compensation Administration.

Appropriation.

Section 301. For the purpose of assisting the States in the administration of their unemployment compensation laws, there is hereby authorized to be appropriated, for the fiscal year ending June 30, 1936, the sum of $4,000,000, and for each fiscal year thereafter the sum of $49,000,000, to be used as hereinafter provided.

Payments to States.

Sec. 302(a). The Board shall from time to time certify to the Secretary of the Treasury for payment to each State which has an unemployment compensation law approved by the Board under Title IX, such amounts as the Board determines to be necessary for the proper administration of such law during the fiscal year in which such payment is to be made. The Board's determination shall be based on (1) the population of the State; (2) an estimate of the number of persons covered by the State law and of the cost of proper administration of such law; and (3) such other factors as the Board finds relevant. The Board shall not certify for payment under this section in any fiscal year a total amount in excess of the amount appropriated therefor for such fiscal year.

(b) Out of the sums appropriated therefor, the Secretary of the Treasury shall, upon receiving a certification under subsection (a), pay through the Division of Disbursement of the Treasury Department and prior to audit or settlement by the General Accounting Office, to the State agency charged with the administration of such law the amount so certified.

Provisions of State Laws.

Sec. 303 (a). The Board shall make no certification for payment to any State unless it finds that the law of such State, approved by the Board under Title IX, includes provisions for—

(1) Such methods of administration (other than those relating to selection, tenure of office, and compensation of personnel) as are found by the Board to be reasonably calculated to insure full payment of unemployment compensation when due; and

(2) Payment of unemployment compensation solely through public employment offices in the State or such other agencies as the Board may approve; and

(3) Opportunity for a fair hearing, before an impartial tribunal, for all individuals whose claims for unemployment compensation are denied; and

(4) The payment of all money received in the unemployment fund of such State, immediately upon such receipt, to the Secretary of the Treasury to the credit of the Unemployment Trust Fund established by section 904; and

(5) Expenditure of all money requisitioned by the State agency from the Unemployment Trust fund, in the payment of unemployment compensation, exclusive of expenses of administration; and

(6) The making of such reports, in such form and containing such information, as the Board may from time to time require, and compliance with such provisions as the Board may from time to time find necessary to assure the correctness and verification of such reports; and

(7) Making available upon request to any agency of the United States charged with the administration of public works or assistance through public employment, the name, address, ordinary occupation and employment status of each recipient of unemployment compensation, and a statement of such recipient's rights to further compensation under such law.

(b) Whenever the Board, after reasonable notice and opportunity for hearing to the State agency charged with the administration of the State law, finds that in the administration of the law there is—

(1) a denial, in a substantial number of cases, of unemployment compensation to individuals entitled thereto under such law; or

(2) a failure to comply substantially with any provision specified in subsection (a);

the Board shall notify such State agency that further payments will not be made to the State until the Board is satisfied that there is no longer any such denial or failure to comply. Until it is so satisfied it shall make no further certification to the Secretary of the Treasury with respect to such State.

* * * * * *

TITLE VII—SOCIAL SECURITY BOARD.

Establishment.

SECTION 701. There is hereby established a Social Security Board (in this Act referred to as the "Board") to be composed of three members to be appointed by the President, by and with the advice and consent of the Senate. During his term of membership on the Board, no member shall engage in any other business, vocation, or employment. Not more than two of the members of the Board shall be members of the same political party. Each member shall receive a salary at the rate of $10,000 a year and shall hold office for a term of six years, except that (1) any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed, shall be appointed for the remainder of such term; and (2) the terms of office of the members first taking office after the date of the enactment of this Act shall expire, as designated by the President at the time of appointment, one at the end of two years, one at the end of four years, and one at the end of six years, after the date of the enactment of this Act. The President shall designate one of the members as the chairman of the Board.

Duties Of Social Security Board.

Sec. 702. The Board shall perform the duties imposed upon it by this Act and shall also have the duty of studying and making recommendations as to the most effective methods of providing economic security through social insurance and as to legislation and matters of administrative policy concerning old-age pensions, unemployment compensation, accident compensation, and related subjects.

Expenses Of The Board.

Section 703. The Board is authorized to appoint and fix the compensation of such officers and employees, and to make such expenditures, as may be necessary for carrying out its functions under this Act. Appointments of attorneys and experts may be made without regard to the civil-service laws.

Reports.

Sec. 704. The Board shall make a full report to Congress, at the beginning of each regular session, of the administration of the functions with which it is charged.

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TITLE IX—TAX ON EMPLOYERS OF EIGHT OR MORE

Imposition Of Tax.

Section 901. On and after January 1, 1936, every employer (as defined in section 907) shall pay for each calendar year an excise tax, with respect to having individuals in his employ, equal to the following percentages of the total wages (as defined in section 907) payable by him (regardless of the time of payment) with respect to employment (as defined in section 907) during such calendar year:

(1) With respect to employment during the calendar year 1936 the rate shall be 1 per centum;

(2) With respect to employment during the calendar year 1937 the rate shall be 2 per centum;

(3) With respect to employment after December 31, 1937, the rate shall be 3 per centum.

Credit Against Tax

Sec. 902. The taxpayer may credit against the tax imposed by section 901 the amount of contributions, with respect to employment during the taxable year, paid by him (before the date of filing his return for the taxable year) into an unemployment fund under a State law. The total credit allowed to a taxpayer under this section for all contributions paid into unemployment funds with respect to employment during such taxable year shall not exceed 90 per centum of the tax against which it is credited, and credit shall be allowed only for contributions made under the laws of States certified for the taxable year as provided in section 903.

Certification Of State Laws.

Sec. 903. (a) The Social Security Board shall approve any State law submitted to it, within thirty days of such submission, which it finds provides that—

(1) All compensation is to be paid through public employment offices in the State or such other agencies as the Board may approve;

(2) No compensation shall be payable with respect to any day of unemployment occurring within two years after the first day of the first period with respect to which contributions are required;

(3) All money received in the unemployment fund shall immediately upon such receipt be paid over to the Secretary of the Treasury to the credit of the Unemployment Trust Fund established by section 904;

(4) All money withdrawn from the Unemployment Trust Fund by the State agency shall be used solely in the payment of compensation, exclusive of expenses of administration;

(5) Compensation shall not be denied in such State to any otherwise eligible individual for refusing to accept new work under any of the following conditions: (A) If the position offered is vacant due directly to a strike, lockout, or other labor dispute; (B) if the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality; (C) if as a condition of being employed the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organizations;

(6) All the rights, privileges, or immunities conferred by such law or by acts done pursuant thereto shall exist subject to the power of the legislature to amend or repeal such law at any time. The Board shall, upon approving such law, notify the Governor of the State of its approval.

(b) On December 31 in each taxable year the Board shall certify to the Secretary of the Treasury each State whose law it has previously approved, except that it shall not certify any State which, after reasonable notice and opportunity for hearing to the State agency, the Board finds has changed its law so that it no longer contains the provisions specified in subsection (a) or has with respect to such taxable year failed to comply substantially with any such provisions.

(c) If, at any time during the taxable year, the Board has reason to believe that a State whose law it has previously approved, may not be certified under subsection (b), it shall promptly so notify the Governor of such State.

Unemployment Trust Fund.

Sec. 904. (a) There is hereby established in the Treasury of the United States a trust fund to be known as the "Unemployment Trust Fund," hereinafter in this title called the "Fund." The Secretary of the Treasury is authorized and directed to receive and hold in the Fund all moneys deposited therein by a State agency from a State unemployment fund. Such deposit may be made directly with the Secretary of the Treasury or with any Federal reserve bank or member bank of the Federal Reserve System designated by him for such purpose.

(b) It shall be the duty of the Secretary of the Treasury to invest such portion of the Fund as is not, in his judgment, required to meet current withdrawals. Such investments may be made only in interest bearing obligations of the United States or in obligations guaranteed as to both principal and interest by the United States. For such purpose such obligations may be acquired (1) on original issue at par, or (2) by purchase of outstanding obligations at the market price. The purposes for which obligations of the United States may be issued under the Second Liberty Bond Act, as amended, are hereby extended to authorize the issuance at par of special obligations exclusively to the Fund. Such special obligations shall bear interest at a rate equal to the average rate of interest, computed as of the end of the calendar month next preceding the date of such issue, borne by all interest-bearing obligations of the United States then forming part of the public

debt; except that where such average rate is not a multiple of one-eighth of 1 per centum, the rate of interest of such special obligations shall be the multiple of one-eighth of 1 per centum next lower than such average rate. Obligations other than such special obligations may be acquired for the Fund only on such terms as to provide an investment yield not less than the yield which would be required in the case of special obligations if issued to the Fund upon the date of such acquisition.

(c) Any obligations acquired by the Fund (except special obligations issued exclusively to the Fund) may be sold at the market price, and such special obligations may be redeemed at par plus accrued interest.

(d) The interest on, and the proceeds from the sale or redemption of, any obligations held in the Fund shall be credited to and form a part of the Fund.

(e) The Fund shall be invested as a single fund, but the Secretary of the Treasury shall maintain a separate book account for each State agency and shall credit quarterly on March 31, June 30, September 30, and December 31, of each year, to each account, on the basis of the average daily balance of such account, a proportionate part of the earnings of the Fund for the quarter ending on such date.

(f) The Secretary of the Treasury is authorized and directed to pay out of the Fund to any State agency such amount as it may duly requisition, not exceeding the amount standing to the account of such State agency at the time of such payment.

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Interstate Commerce.

Sec. 906. No person required under a State law to make payments to an unemployment fund shall be relieved from compliance therewith on the ground that he is engaged in

interstate commerce, or that the State law does not distinguish between employees engaged in interstate commerce and those engaged in intrastate commerce.

Definitions.

Sec. 907. When used in this title—

(a) The term "employer" does not include any person unless on each of some twenty days during the taxable year, each day being in a different calendar week, the total number of individuals who were in his employ for some portion of the day (whether or not at the same moment of time) was eight or more.

(b) The term "wages" means all remuneration for employment, including the cash value of all remuneration paid in any medium other than cash.

(c) The term "employment" means any service, of whatever nature, performed within the United States by an employee for his employer, except—

(1) Agricultural labor;

(2) Domestic service in a private home;

(3) Service performed as an officer or member of the crew of a vessel on the navigable waters of the United States;

(4) Service performed by an individual in the employ of his son, daughter, or spouse, and service performed by a child under the age of twenty-one in the employ of his father or mother;

(5) Service performed in the employ of the United States Government or of an instrumentality of the United States;

(6) Service performed in the employ of a State, a political subdivision thereof, or an instrumentality of one or more States or political subdivisions;

(7) Service performed in the employ of a corporation, community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

(d) The term "State agency" means any State officer, board, or other authority, designated under a State law to administer the unemployment fund in such State.

(e) The term "unemployment fund" means a special fund, established under a State law and administered by a State agency, for the payment of compensation.

(f) The term "contributions" means payments required by a State law to be made by an employer into an unemployment fund, to the extent that such payments are made by him without any part thereof being deducted or deductible from the wages of individuals in his employ.

(g) The term "compensation" means cash benefits payable to individuals with respect to their unemployment.

ILLINOIS UNEMPLOYMENT COMPENSATION ACT.
Ch. 48, Sec. 243, Ill. Rev. Stat., 1943

§26. LIEN CREATED UPON ASSETS OF EMPLOYER—COMMENCEMENT—LIMITATION.) (a) A lien is hereby created in favor of the Director upon all the personal property or rights thereto owned or thereafter acquired by any employer and used by him in connection with his trade, occupation, profession or business, from whom contributions,

interest or penalties are or may hereafter become due. Such lien shall be for a sum equal to the amount at any time due from such employer to the Director on account of contributions, interest and penalties thereon. Such lien shall attach to such property at the time such contributions, interest or penalties became, or shall hereafter become, due. In all cases where a report setting forth the amount of such contributions has been filed with the Director, no action to enforce such lien shall be brought after three years from the date of the filing of such report and in all other cases no action to enforce such lien shall be brought after three years from the date that the determination and assessmenf of the Director made pursuant to the provisions of this Act became final.

INNOCENT PURCHASER — RECORDATION — WITHDRAWAL OF NOTICE.

(b) (1) Such lien shall be invalid only as to any innocent purchaser for value of stock in trade of any employer in the usual course of such employer's business, and shall be invalid as to any innocent purchaser for value of any of the other assets to which such lien has attached, unless notice thereof has been filed by the Director in the office of the Recorder of Deeds of the county within which the property subject to the lien is situated. The Director may, in his discretion, for good cause shown, issue a certificate of withdrawal of notice of lien filed against any employer, which certificate shall be recorded in the same manner as herein provided for the recording of notice of liens. Such withdrawal of notice of lien shall invalidate such lien as against any person acquiring any of such employers' property or any interest therein, subsequent to the recordation of the withdrawal of notice of lien, but shall not otherwise affect the validity of such lien, nor shall it prevent the

Director from re-recording notice of such lien. In the event notice of such lien is re-recorded, such notice shall be effective as against third persons only as of the date of such re-recordation.

FILING OF NOTICE—LIEN INDEX.

(2) The Recorder of Deeds of each county shall procure at the expense of the county a file labeled "Unemployment Compensation Contribution Lien Notices" and an index book labeled "Unemployment Compensation Contribution Lien Index." When a notice of any such lien is presented to him for filing, he shall file it in numerical order in the file and shall enter it alphabetically in the index. The entry shall show the name, and last known business address of the employer named in the notice, the serial number of the notice, the date and hour of filing, and the amount of contribution, interest and penalty thereon due and unpaid. When a certificate of complete or partial release of such lien issued by the Director is presented for filing in the office of the Recorder of Deeds where a notice of lien was filed, the Recorder shall permanently attach the certificate of release to the notice of lien and shall enter the certificate of release and the date in the Unemployment Compensation Contribution Lien Index on the line where the notice of lien is entered.

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PRIORITY OF LIEN.

(d) The lien herein created in favor of the Director shall be prior to all other liens whether general or specific, and shall be inferior only to any claim for wages filed pursuant to "An Act to protect employees and laborers in their claims for wages" approved June 15, 1887, as

amended, in an amount not exceeding $250.00 for work performed within six months from the date of filing such claim, and to such liens as shall attach prior to the filing of Notice of Lien by the Director with the Recorder of Deeds as provided in this Act; provided, however, that in all cases where statutory provision is made for the recordation or other public notice of a lien, the lien of the Director shall be inferior only to such liens as shall have been duly recorded, or of which public notice shall have been duly given, in the manner provided by such statute, prior to the filing of notice of lien by the Director with the Recorder of Deeds as in this Act provided.

FORECLOSURE OF LIEN.

(e) In addition and as an alternative to any other remedy provided by this Act, or by the laws of the State of Illinois, the Director may enforce the lien herein created by petition in the name of the People of the State of Illinois to the Circuit Court of the county wherein the property subject to the lien is situated, praying that the lien which has attached to said property, be foreclosed and the aforesaid property be sold in the same manner as in cases of foreclosure of mortgages upon personal property in courts of record. In all such cases, it shall not be necessary that said petition describe the property to which said lien has attached and it shall be the duty of the employer against whom such petition has been filed to file in said proceedings, a full and complete schedule, under oath, of all personal property and rights thereto which he owned at the time the contributions, upon which the lien sought to be foreclosed is based, became due, or which he subsequently acquired, indicating upon such schedule the property so owned by such employer which was, or is used by such em-

ployer in connection with his trade, occupation, profession or business, and if such employer shall so fail to do after having been so ordered by the court, he may be punished as in other cases of contempt of court.

The court in which such proceedings shall be pending may issue such process, make such orders requiring the parties to appear and require such notice to be given as is, or may be made, in other civil actions and shall have the same power and jurisdiction of the parties in such matter, and the rules of practice shall be the same as in other civil cases except as is otherwise provided by this Act.

Upon sale of the aforesaid personal property, the proceeds shall be applied to the payment of the costs incurred in the proceeding; the satisfaction of such liens as have attached to said property in the order of their priority and the balance, if any, to such parties as the court shall find to be entitled thereto. The Director is hereby empowered to bid at any sale conducted pursuant to the provisions of this Act.